

SENATE BILL No. 517

DIGEST OF INTRODUCED BILL

Citations Affected: IC 31-14-21-9; IC 31-19; IC 35-46-1-9.

Synopsis: Adoption package. Provides that a petitioner for adoption may have temporary custody of the child sought to be adopted pending final resolution of the adoption. Requires a paternity proceeding to be consolidated with a pending adoption proceeding. Requires notice of a petition for adoption to a person other than a putative father. Allows a court to dispense with a biological father's or parent's consent to adoption in certain circumstances. Revises procedure for contesting an adoption. Amends the circumstances in which a person may withdraw a consent to adoption. Provides that a woman commits a Class A misdemeanor if the woman presents herself as a birth mother and accepts adoption expenses with no intention of placing the child for adoption.

Effective: July 1, 2003.

Clark

January 23, 2003, read first time and referred to Committee on Judiciary.

C
o
p
y



First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

SENATE BILL No. 517

A BILL FOR AN ACT to amend the Indiana Code concerning family law and juvenile law.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 31-14-21-9, AS AMENDED BY P.L.200-1999,
2 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2003]: Sec. 9. (a) **Subject to IC 31-19-2-14**, if a court
4 presiding over a paternity action under this article knows of:
5 (1) a pending adoption of a child who is the subject of the
6 paternity action; and
7 (2) the court in which the adoption is pending;
8 the court having jurisdiction over the paternity action shall establish a
9 child's paternity within the period prescribed by this chapter.
10 (b) **Subject to IC 31-19-2-14**, the court shall conduct an initial
11 hearing not more than thirty (30) days after:
12 (1) the filing of the paternity petition; or
13 (2) the birth of the child;
14 whichever occurs later.
15 SECTION 2. IC 31-19-2-13 IS ADDED TO THE INDIANA CODE
16 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
17 1, 2003]: **Sec. 13. (a) At the time of or any time after the filing of a**



C
o
p
y

petition for adoption, a petitioner may file a separate, ex parte, verified petition requesting temporary custody of a child sought to be adopted. The petition for temporary custody must be signed by each petitioner for adoption.

(b) A court may grant a petition for temporary custody if the court finds that:

- (1) the petition for adoption is in proper form; and
- (2) placing the child with the petitioner or petitioners for adoption pending the hearing on the petition for adoption is in the best interests of the child.

(c) If temporary custody is granted under this section, the petitioner or petitioners for adoption are legally and financially responsible for the child until otherwise ordered by the court.

SECTION 3. IC 31-19-2-14 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 14. (a) If a petition for adoption and a petition to establish paternity are pending at the same time for a child sought to be adopted, the court in which the petition for adoption has been filed has exclusive jurisdiction over the child, and the paternity proceeding must be consolidated with the adoption proceeding.

(b) If the petition for adoption is dismissed, the court hearing the consolidated adoption and paternity proceeding shall determine who has custody of the child under IC 31-19-11-5.

(c) Following a dismissal of the adoption petition under subsection (b), the court may:

- (1) retain jurisdiction over the paternity proceeding; or
- (2) return the paternity proceeding to the court in which it was originally filed.

If the paternity proceeding is returned to the court in which it was originally filed, the court assumes jurisdiction over the child, subject to any provisions of the consolidated court's order under IC 31-19-11-5.

SECTION 4. IC 31-19-2.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]:

Chapter 2.5. General Notice Requirements

Sec. 1. This chapter applies to notice given to a:

- (1) putative father under IC 31-19-4; and
- (2) person under IC 31-19-4.5.

Sec. 2. (a) Except as provided in subsection (b), IC 31-19-4 applies to notice given to a putative father and IC 31-19-4.5 applies to notice given to other persons.

C
o
p
y



(b) If a petition for adoption alleges the consent of a putative father to the adoption has not been obtained and is unnecessary under:

- (1) IC 31-19-9-8(a)(1);
- (2) IC 31-19-9-8(a)(2);
- (3) IC 31-19-9-8(a)(4)(B);
- (4) IC 31-19-9-8(a)(4)(C);
- (5) IC 31-19-9-8(a)(9);
- (6) IC 31-19-9-8(a)(11); or
- (7) IC 31-19-9-8(a)(12);

notice must be given under IC 31-19-4.5.

Sec. 3. (a) Except as provided in section 4 of this chapter, notice must be given to a:

- (1) person whose consent to adoption is required under IC 31-19-9-1; and
- (2) putative father who is entitled to notice under IC 31-19-4.

(b) If the parent-child relationship has been terminated under IC 31-35 (or 31-6-5 before its repeal), notice of the pendency of the adoption proceedings shall be given to the:

- (1) licensed child placing agency; or
- (2) county office of family and children;

that is the ward of the child.

Sec. 4. Notice of the pendency of the adoption proceedings does not have to be given to:

- (1) a person whose consent to adoption has been filed with the petition for adoption;
- (2) a person whose consent to adoption is not required by:
 - (A) IC 31-19-9-8(a)(4)(A);
 - (B) IC 31-19-9-8(a)(4)(D);
 - (C) IC 31-19-9-8(a)(5);
 - (D) IC 31-19-9-8(a)(6);
 - (E) IC 31-19-9-8(a)(7);
 - (F) IC 31-19-9-8(a)(8);
 - (G) IC 31-19-9-12; or
 - (H) IC 31-19-9-15; or

- (3) the hospital of an infant's birth or a hospital to which an infant is transferred for medical reasons after birth if the infant is being adopted at or shortly after birth.

SECTION 5. IC 31-19-4-1, AS AMENDED BY P.L.200-1999, SECTION 14, IS AMENDED TO READ AS FOLLOWS: Sec. 1. Except as provided by section 11 of this chapter, IC 31-19-2.5-4, if:

- (1) on or before the date the mother of a child executes a consent



to the child's adoption, the mother has provided an attorney or agency arranging the adoption with the name and address of the putative father; and

(2) the putative father of the child has:

(A) failed or refused to consent to the adoption of the child; or

(B) not had the parent-child relationship terminated under IC 31-35 (or IC 31-6-5 before its repeal);

the putative father shall be given notice of the adoption proceedings under Rule 4.1 of the Indiana Rules of Trial Procedure.

SECTION 6. IC 31-19-4-2, AS AMENDED BY P.L.200-1999, SECTION 15, IS AMENDED TO READ AS FOLLOWS: Sec. 2. Except as provided by ~~section 11 of this chapter~~, **IC 31-19-2.5-4**, if:

(1) on or before the date the mother of a child executes a consent to the child's adoption, the mother has not provided an attorney or agency arranging the adoption with the name or address, or both, of the putative father of the child; and

(2) the putative father of the child has:

(A) failed or refused to consent to the adoption of the child or has not had the parent-child relationship terminated under IC 31-35 (or IC 31-6-5 before its repeal); and

(B) registered with the putative father registry under IC 31-19-5 (or IC 31-6-5 before its repeal) within the period under IC 31-19-5-12;

the putative father shall be given notice of the adoption proceedings under Rule 4.1 of the Indiana Rules of Trial Procedure.

SECTION 7. IC 31-19-4-4, AS AMENDED BY P.L.200-1999, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4. Notice of the adoption proceeding required under section 3 of this chapter shall be given to an unnamed putative father in substantially the following form:

"NOTICE TO UNNAMED FATHER

The unnamed putative father of the child born to _____ (mother's name) on _____ (date), or the person who claims to be the father of the child born to _____ (mother's name) on _____ (date), is notified that a petition for adoption of the child was filed in the office of the clerk of _____ court, _____ (address of court).

If the unnamed putative father seeks to contest the adoption of the child, the unnamed putative father must file a motion to contest the adoption in accordance with IC 31-19-10-1 in the above named court or a paternity action under IC 31-14 within thirty (30) days after the date of service of this notice. This notice may be served by publication.

If the unnamed putative father:

C
o
p
y



(1) does not file:

(A) a motion to contest the adoption; or

(B) a paternity action under IC 31-14;

within thirty (30) days after service of this notice; or

(2) after filing a paternity action under IC 31-14 fails to establish paternity;

the above named court shall hear and determine the petition for adoption. The unnamed putative father's consent is irrevocably implied and the unnamed putative father loses the right to contest the adoption or the validity of the unnamed putative father's implied consent to the adoption. The unnamed putative father loses the right to establish paternity of the child under IC 31-14.

Nothing _____ (mother's name) or any one else says to the unnamed putative father of the child relieves the unnamed putative father of his obligations under this notice.

Under Indiana law, a putative father is a person who is named as or claims that he may be the father of a child born out of wedlock but who has not yet been legally proven to be the child's father.

This notice complies with IC 31-19-4-4 but does not exhaustively set forth the unnamed putative father's legal obligations under the Indiana adoption statutes. A person being served with this notice should consult the Indiana adoption statutes."

SECTION 8. IC 31-19-4-5, AS AMENDED BY P.L.200-1999, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5. Notice of the adoption proceeding shall be given to:

(1) the putative father who is entitled to notice under section 1 or 2 of this chapter; or

(2) a named putative father under section 3 of this chapter;

in substantially the following form:

"NOTICE TO NAMED FATHER

_____ (putative father's name), who has been named the father of the child born to _____ (mother's name) on _____ (date), or who claims to be the father of the child born to _____ (mother's name) on _____ (date), is notified that a petition for adoption of the child was filed in the office of the clerk of _____ court, _____ (address of the court).

If _____ (putative father's name) seeks to contest the adoption of the child, he must file a motion to contest the adoption in accordance with IC 31-19-10-1 in the above named court, or a paternity action under IC 31-14 not later than thirty (30) days after the date of service of this notice.

C
o
p
y



If _____ (putative father's name):

(1) does not file:

(A) a motion to contest the adoption; or

(B) a paternity action under IC 31-14;

within thirty (30) days after service of this notice; or

(2) after filing a paternity action under IC 31-14 fails to establish paternity;

the above named court will hear and determine the petition for adoption. His consent will be irrevocably implied and he will lose his right to contest either the adoption or the validity of his implied consent to the adoption. He will lose his right to establish his paternity of the child under IC 31-14.

Nothing _____ (mother's name) or anyone else says to _____ (putative father's name) relieves _____ (putative father's name) of his obligations under this notice.

Under Indiana law, a putative father is a person who is named as or claims that he may be the father of a child born out of wedlock but who has not yet been legally proven to be the child's father. For purposes of this notice, _____ (putative father's name) is a putative father under the laws in Indiana regarding adoption.

This notice complies with IC 31-19-4-5 but does not exhaustively set forth a putative father's legal obligations under the Indiana adoption statutes. A person being served with this notice should consult the Indiana adoption statutes."

SECTION 9. IC 31-19-4-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 8. (a) The notice required by this chapter may be waived in writing before or after the birth of a child.

(b) A waiver of notice under subsection (a) must:

(1) be in writing and signed in the presence of a notary public; and

(2) acknowledge that the waiver is irrevocable.

A person who waives notice of an adoption may not subsequently challenge or contest an adoption of the child.

SECTION 10. IC 31-19-4.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]:

Chapter 4.5. Other Persons Entitled to Notice of Adoption

Sec. 1. This chapter:

(1) shall not be construed to affect notice of an adoption provided to a putative father under IC 31-19-4; and

(2) applies to a putative father who has abandoned, failed to

C
o
p
y



support, or failed to communicate with a child.

Sec. 2. Except as provided in IC 31-19-2.5-4, if a petition for adoption alleges that consent to adoption is not required under IC 31-19-9-8, notice of the adoption must be given to the person from whom consent is allegedly not required under IC 31-19-9-8. Notice shall be given under:

(1) Rule 4.1 of the Indiana Rules of Trial Procedure if the person's name and address are known; and

(2) Rule 4.13 of the Indiana Rules of Trial Procedure if the name or address of the person is not known; to a petitioner for adoption.

Sec. 3. Notice of the adoption proceeding shall be given to a person entitled to notice under section 2 of this chapter in substantially the following form:

"NOTICE OF ADOPTION

_____ (person's name) is notified that a petition for adoption of a child, named _____ (child's name, if named), born to _____ (mother's name) on _____ (date) was filed in the office of the clerk of _____ court, _____ (address of the court). The petition for adoption alleges that the consent to adoption of _____ (person's name) is not required because _____ (provide a brief description of the reason(s) the consent is not required).

If _____ (person's name) seeks to contest the adoption of the child, _____ (person's name) must file a motion to contest the adoption in accordance with IC 31-19-10-1 in the above named court not later than thirty (30) days after the date of service of this notice.

If _____ (person's name) does not file a motion to contest the adoption within thirty (30) days after service of this notice the above named court will hear and determine the petition for adoption. The consent to adoption of _____ (person's name) will be irrevocably implied and _____ (person's name) will lose the right to contest either the adoption or the validity of _____'s (person's name) implied consent to the adoption.

No oral statement made to _____ (person's name) relieves _____ (person's name) of _____'s (person's name) obligations under this notice.

This notice complies with IC 31-19-4.5-3 but does not exhaustively set forth a person's legal obligations under the Indiana adoption statutes. A person being served with this notice should consult the Indiana adoption statutes."



C
o
p
y

1 **Sec. 4. (a) The notice required by this chapter may be waived in**
 2 **writing before or after the birth of a child.**

3 **(b) A waiver of notice under subsection (a) must:**

4 **(1) be in writing and signed in the presence of a notary public;**
 5 **and**

6 **(2) acknowledge that the waiver is irrevocable.**

7 **A person who waives notice of an adoption may not challenge or**
 8 **contest an adoption of the child.**

9 **Sec. 5. The description in the notice under section 3 of this**
 10 **chapter of the reasons consent to adoption is not required need**
 11 **only include enough information to put a reasonable person on**
 12 **notice that a petition for adoption that alleges the person's consent**
 13 **to adoption is unnecessary is pending. The description does not**
 14 **require an exhaustive description of the reasons the person's**
 15 **consent to adoption is not required.**

16 **SECTION 11. IC 31-19-9-8 IS AMENDED TO READ AS**
 17 **FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 8. (a) Consent to**
 18 **adoption, which may be required under section 1 of this chapter, is**
 19 **not required from any of the following:**

20 **(1) A parent or parents if the child is adjudged to have been**
 21 **abandoned or deserted for at least six (6) months immediately**
 22 **preceding the date of the filing of the petition for adoption.**

23 **(2) A parent of a child in the custody of another person if for a**
 24 **period of at least one (1) year the parent:**

25 **(A) fails without justifiable cause to communicate**
 26 **significantly with the child when able to do so; or**

27 **(B) knowingly fails to provide for the care and support of the**
 28 **child when able to do so as required by law or judicial decree.**

29 **(3) The biological father of a child born out of wedlock whose**
 30 **paternity has not been established:**

31 **(A) by a court proceeding other than the adoption proceeding;**
 32 **or**

33 **(B) by executing a paternity affidavit under IC 16-37-2-2.1.**

34 **(4) The biological father of a child born out of wedlock who was**
 35 **conceived as a result of:**

36 **(A) a rape for which the father was convicted under**
 37 **IC 35-42-4-1;**

38 **(B) child molesting (IC 35-42-4-3);**

39 **(C) sexual misconduct with a minor (IC 35-42-4-9); or**

40 **(D) incest (IC 35-46-1-3).**

41 **(5) The putative father of a child born out of wedlock if the**
 42 **putative father's consent to adoption is irrevocably implied under**

C
O
P
Y



section 15 of this chapter.

(6) The biological father of a child born out of wedlock if the:

(A) father's paternity is established after the filing of a petition for adoption in a court proceeding or by executing a paternity affidavit under IC 16-37-2-2.1; and

(B) father is required to but does not register with the putative father registry established by IC 31-19-5 within the period required by IC 31-19-5-12.

(7) A parent who has relinquished the parent's right to consent to adoption as provided in this chapter.

(8) A parent after the parent-child relationship has been terminated under IC 31-35 (or IC 31-6-5 before its repeal).

(9) A parent judicially declared incompetent or mentally defective if the court dispenses with the parent's consent to adoption.

(10) A legal guardian or lawful custodian of the person to be adopted who has failed to consent to the adoption for reasons found by the court not to be in the best interests of the child.

(11) The biological father of a child who is less than two (2) years of age at the time of the filing of a petition for the adoption of the child if:

(A) without justifiable cause, the biological father fails to provide emotional support and meaningful financial support to the mother of the child during her pregnancy; or

(B) with regard to a child other than the child for whom adoption is sought, the biological father:

(i) is adjudged to have abandoned or deserted the other child for at least six (6) months immediately preceding the date of the filing of the petition for adoption of the child sought to be adopted; or

(ii) fails without justifiable cause to communicate significantly with the other child if the other child is in the custody of another person or knowingly fails to provide care and support when able to do so and required by a judicial decree if the other child is in the custody of another person.

(12) A parent if:

(A) a petitioner for adoption proves by clear and convincing evidence that the parent is unfit to be a parent; and

(B) the best interests of the child sought to be adopted would be served if the court dispensed with the parent's

C
o
p
y



consent.

(b) If a parent has made only token efforts to support or to communicate with the child **or another child under subsection (a)(11)(B)**, the court may declare the child **or other child** abandoned by the parent.

SECTION 12. IC 31-19-9-17, AS AMENDED BY P.L.200-1999, SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 17. (a) A putative father whose consent to an adoption is implied under section 15 of this chapter is not entitled to establish paternity of the child:

(1) in a court proceeding under IC 31-14; or

(2) by executing a paternity affidavit under IC 16-37-2-2.1.

(b) Notwithstanding subsection (a), a putative father who is barred from establishing paternity of the child under subsection (a) may establish paternity of the child in a court proceeding under IC 31-14 if:

(1) the putative father submits, together with the petition to establish paternity, an affidavit prepared by the:

(A) licensed child placing agency; or

(B) attorney;

that served notice or caused notice to be served upon the putative father under IC 31-19-3-1 stating that neither a petition for adoption nor a placement of the child in a proposed adoptive home is pending; and

(2) the court finds on the record, based on all the information available to the court, including an affidavit described under subdivision (1), that neither a:

(A) petition for adoption; nor

(B) placement of the child in a prospective adoptive home; is pending.

The requirements of this subsection are jurisdictional and must be strictly adhered to by the putative father and the court.

(c) An individual who is otherwise barred from establishing paternity under this article may establish paternity in relation to a child if an adoption for the child is not pending or contemplated. A petition for adoption that is not filed or a petition for adoption that is dismissed is not a basis for enabling an individual to establish paternity under this section unless the requirements of subsection (b) are satisfied.

SECTION 13. IC 31-19-9-18 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 18. (a) The consent of a person who is served with notice under IC 31-19-4.5 to adoption is**



C
o
p
y

irrevocably implied without further court action if the person:

(1) fails to file a motion to contest the adoption as required under IC 31-19-10 not later than thirty (30) days after service of notice under IC 31-19-4.5; or

(2) files a motion to contest the adoption as required under IC 31-19-10 but fails to:

(A) appear at the hearing to contest the adoption; and

(B) prosecute the motion to contest without unreasonable delay.

(b) A court shall dismiss a motion to contest an adoption filed under subsection (a)(2) with prejudice and the person's consent to the adoption shall be irrevocably implied if the court finds that the person who filed the motion to contest is failing to prosecute the motion without unreasonable delay.

SECTION 14. IC 31-19-9-19 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 19. A person whose consent to adoption is irrevocably implied under section 18 of this chapter may not contest the adoption or the validity of the person's implied consent to the adoption.**

SECTION 15. IC 31-19-10-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 1. (a) Except as provided in subsections (c) and (d), only a person entitled to notice of adoption under IC 31-19-4 or IC 31-19-4.5 may contest an adoption.**

(b) A person contesting an adoption must file a motion to contest the adoption with the court not later than thirty (30) days after service of notice of the pending adoption.

(c) A person seeking to withdraw consent to an adoption must file a motion to withdraw consent to the adoption with the court.

(d) An individual who does not admit paternity of a child waives notice under IC 31-19-4-8 and IC 31-19-4.5-4 and may not contest an adoption.

SECTION 16. IC 31-19-10-1.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 1.2. (a) If a petition for adoption alleges that a parent's consent to adoption is unnecessary under:**

(1) IC 31-19-9-8(a)(1); or

(2) IC 31-19-9-8(a)(2);

and the parent files a motion to contest the adoption under section 1 of this chapter, a petitioner for adoption has the burden of proving that the parent's consent to the adoption is unnecessary



1 under IC 31-19-9-8.

2 (b) If a petition for adoption alleges that a parent's consent to
3 adoption is unnecessary under:

4 (1) IC 31-19-9-8(a)(4)(B); or

5 (2) IC 31-19-9-8(a)(4)(C);

6 and the parent files a motion to contest the adoption under section
7 1 of this chapter, the parent has the burden of proving that the
8 child was not conceived under circumstances that would cause the
9 parent's consent to be unnecessary under IC 31-19-9-8(a)(4). The
10 absence of a criminal prosecution and conviction is insufficient to
11 satisfy the burden of proof.

12 (c) If a petition for adoption alleges that a parent's consent to
13 adoption is unnecessary under IC 31-19-9-8(a)(9) and the parent
14 files a motion to contest the adoption under section 1 of this
15 chapter, a petitioner for adoption has the burden of proving that
16 the parent's consent to the adoption is unnecessary under
17 IC 31-19-9-8(a)(9).

18 (d) If a petition for adoption alleges that a legal guardian or
19 lawful custodian's consent to adoption is unnecessary under
20 IC 31-19-9-8(a)(10) and the legal guardian or lawful custodian files
21 a motion to contest the adoption under section 1 of this chapter, the
22 legal guardian or lawful custodian has the burden of proving that
23 the withholding of the consent to adoption is in the best interests of
24 the person sought to be adopted.

25 (e) If a petition for adoption alleges that a parent's consent to
26 adoption is unnecessary under IC 31-19-9-8(a)(11) and the parent
27 files a motion to contest the adoption under section 1 of this
28 chapter, a petitioner for adoption has the burden of proving that
29 the requirements of IC 31-19-9-8(a)(11) are satisfied and that the
30 best interest of the child is served if the court dispenses with the
31 parent's consent to adoption.

32 (f) If a petition for adoption alleges that a parent's consent to
33 adoption is unnecessary under IC 31-19-9-8(a)(12) and the parent
34 files a motion to contest the adoption under section 1 of this
35 chapter, a petitioner for adoption has the burden of proving that
36 the requirements of IC 31-19-9-8(a)(12) are satisfied and that the
37 best interests of the child are served if the court dispenses with the
38 parent's consent to adoption.

39 (g) If a petition for adoption alleges that a parent's consent to
40 adoption is unnecessary under:

41 (1) IC 31-19-9-9; or

42 (2) IC 31-19-9-10;

C
o
p
y



1 and the parent files a motion to contest the adoption under section
 2 1 of this chapter, a petitioner has the burden of proving that the
 3 requirements of IC 31-19-9-9 or IC 31-19-9-10, respectively, are
 4 satisfied and that the best interests of the child are served if the
 5 court dispenses with the parent's consent to adoption.

6 (h) If a court finds that the person who filed the motion to
 7 contest the adoption is failing to prosecute the motion without
 8 undue delay, the court shall dismiss the motion to contest with
 9 prejudice, and the person's consent to the adoption shall be
 10 irrevocably implied.

11 SECTION 17. IC 31-19-10-1.4 IS ADDED TO THE INDIANA
 12 CODE AS A NEW SECTION TO READ AS FOLLOWS
 13 [EFFECTIVE JULY 1, 2003]: Sec. 1.4. A court, in making a
 14 determination under section 1.2(f) of this chapter, shall consider all
 15 relevant evidence, but may not base its determination solely on a
 16 finding that a:

- 17 (1) petitioner for adoption would be a better parent for a child
- 18 than the parent who filed the motion to contest the adoption;
- 19 or
- 20 (2) parent has a biological link to the child sought to be
- 21 adopted.

22 SECTION 18. IC 31-19-10-1.6 IS ADDED TO THE INDIANA
 23 CODE AS A NEW SECTION TO READ AS FOLLOWS
 24 [EFFECTIVE JULY 1, 2003]: Sec. 1.6. (a) A court, in making a
 25 determination in a contested adoption proceeding, shall be guided
 26 by, but not limited to, the following factors:

- 27 (1) The state has a compelling interest in promptly providing
- 28 a stable and permanent home for an adoptive child and in
- 29 preventing the disruption of adoptive placements.
- 30 (2) An adoptive child has a right to permanence and stability
- 31 in an adoptive placement.
- 32 (3) An adoptive parent has a constitutionally protected liberty
- 33 and privacy interest in retaining custody of an adoptive child.
- 34 (4) A biological parent may have a legally protected interest
- 35 in a child, but the failure of a:
- 36 (A) biological parent to establish a meaningful relationship
- 37 with the child;
- 38 (B) biological parent to assume real and substantial
- 39 parental responsibilities for a child;
- 40 (C) biological mother to abstain from conduct that might
- 41 seriously jeopardize the health and well-being of her
- 42 unborn child; or



C
o
p
y

(D) biological father to support the mother of the child during the pregnancy; is a basis for the court to abridge the biological parent's interest.

(b) A court, in making a determination whether to abridge a parent's interest in a child, may be guided by, but not limited to, the following additional factors:

(1) An emotional illness, mental illness, or mental deficiency of a duration and nature so as to render the parent unlikely to care for the ongoing physical, psychological, and emotional needs of a child within a reasonable period of time.

(2) An incident of a life threatening injury, serious bodily injury, or the disfigurement of a child caused by a parent.

(3) Any conduct toward the child by a parent that is physically or sexually abusive.

(4) An incident of violent behavior that demonstrates that the parent is unfit to maintain an appropriate parent-child relationship.

(5) The excessive use of alcohol or drugs that creates a likelihood that the parent will be unable to properly care for a child.

(6) An individual who has not established paternity in relation to a child under IC 31-14 is not entitled to the same parental rights as an individual who has established paternity in relation to a child.

SECTION 19. IC 31-19-10-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. (a) A consent to adoption may not be withdrawn before the entry of the adoption decree unless: not later than thirty (30) days after consent to adoption is signed if:

(1) the court finds, after notice and opportunity to be heard afforded to the petitioner for adoption, that the person seeking the withdrawal is acting in the best interest of the person sought to be adopted; and

(2) the court orders the withdrawal.

(b) A consent to adoption may not be withdrawn after:

(1) thirty (30) days after the consent to adoption is signed;

(2) the person who signs the consent to adoption appears before a court in which the petition for adoption has been or will be filed; or

(3) the person who signs the consent to adoption appears before a court of competent jurisdiction if the parent is

C
o
p
y



outside of Indiana and acknowledges that the person:

(A) understood the consequences of the signing of the consent to adoption;

(B) freely and voluntarily signed the consent to adoption; and

(C) believes that adoption is in the best interests of the person to be adopted;

whichever occurs first.

SECTION 20. IC 31-19-10-4.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4.5. The putative father of a child who is served with notice under IC 31-19-4 ~~may~~ **and wishes to** contest the adoption **must do so** in accordance with this chapter.

SECTION 21. IC 31-19-10-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 7. (a) The court may:

(1) send all notices of the filing of a motion to contest an adoption; ~~and~~

(2) conduct bifurcated hearings under this chapter; **and**

(3) **issue an order protecting the anonymity of a petitioner for adoption.**

(b) An order issued under subsection (a)(3) may include an order directed to an attorney who represents a party:

(1) **contesting an adoption; or**

(2) **seeking to withdraw a consent to adoption.**

An order under subdivision (1) or (2) may order the attorney not to disclose information that identifies or may tend to identify a petitioner for adoption.

SECTION 22. IC 35-46-1-9.5, AS ADDED BY P.L.200-1999, SECTION 33, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 9.5. A person who is a birth mother, or a woman who holds herself out to be a birth mother, and who knowingly or intentionally benefits from adoption related expenses paid:

(1) when the person knows or should have known that the person is not pregnant; ~~or~~

(2) by or on behalf of a prospective adoptive parent who is unaware that at the same time another prospective adoptive parent is also incurring adoption related expenses **described under section 9(b) of this chapter** in an effort to adopt the same child; **or**

(3) **when the person does not intend to make an adoptive placement;**

commits adoption deception, a Class A misdemeanor. In addition to any other penalty imposed under this section, a court may order the

C
o
p
y



1 person who commits adoption deception to make restitution to a
2 prospective adoptive parent, attorney, or licensed child placing agency
3 that incurs an expense as a result of the offense.

4 SECTION 23. THE FOLLOWING ARE REPEALED[EFFECTIVE
5 JULY 1, 2003]: IC 31-19-4-10; IC 31-19-4-11; IC 31-19-4-12.

6 SECTION 24. [EFFECTIVE JULY 1, 2003] **IC 35-46-1-9.5, as**
7 **amended by this act, applies to an offense committed after June 30,**
8 **2003.**

C
o
p
y

